WP(C) 9576/2004
BEFORE
THE HON'BLE MR. JUSTICE B.P. KATAKEY

JUDGMENT AND ORDER

The petitioner, who was working as Warehousing Manager of Assam State Warehousing Corporation, by the present writ petition has prayed for a direction to the respondent authorities, more particularly, the respondent Corporation, to release the retirement benefits due and payable to him namely, the amount towards the contributory provident fund, gratuity and leave encashment. The petitioner was initially appointed as Technical Assistant in the year 1967 and thereafter, promoted to the post of Warehousing Manager in the year 1988. While he was posted in the said capacity at Dibrugarh, he was served with a charge memo dated 15.06.1994 leveling three charges. By another charge memo an additional charge was brought against the petitioner. Thereafter, the petitioner was placed under suspension by the order passed by the Managing Director on 01.09.1994. Being not satisfied with the show cause submitted by the petitioner a disciplinary enquiry was initiated against him in respect of the said four charges. The Managing Director, i.e. the disciplinary authority, of the Corporation, on 01.11.1995 passed the order of punishment by holding the petitioner guilty of the charges against him particularly the negligence of duty. The Managing Director by the said order has directed recovery of an amount of Rs.3,59,800/- from the petitioner, being the loss sustained by the Corporation, as soon as the Court passes decree in the cases filed by the parties for releasation of the said amount, with the further order that such amount shall not be recovered if no decree is passed. The Managing Director has further ordered that the petitioner shall not be promoted from Area Manager to Manager/Divisional Manager for a period of five years. Against the additional charge of loss of Rs.17,971/- it was ordered to be recovered from the petitioner's pay at the rate of Rs.500/- only per month. The disciplinary authority has also ordered that the petitioner will not be entitled to the benefit any pay and allowances, other than the allowances, which he has already drawn, during the period of suspension. The petitioner was retired from the service of the Corporation as Deputy Manager (Personal) on attaining the age of superannuation on 01.02.2000. It is pertinent to mention here that prior to his retirement from service, the petitioner has not challenged the order dated 01.11.1995. It was, however, on 16.04.2004, he filed a representation before the Managing Director of the said Warehousing Corporation for review of the said order dated 01.11.1995, which according to the petitioner, has not been disposed of till date. The petitioner has, thereafter, filed the present writ petition seeking a direction to the Corporation to release the retiral benefit including Rs.3,59,800/-, which according to him has been withheld by the Corporation by virtue of the order dated 01.11.1995 passed by the Managing Director.

2. I have heard Mr. D. Das, the learned counsel for the petitioner as well as Mr. L. P. Sarma, the learned counsel appearing on behalf of the respondent Nos.2 and 3 and Mr. Sen Deka, the learned counsel appearing on behalf of the respondent No.1.

3. Mr. Das, the learned counsel for the petitioner has submitted that though the petitioner is entitled to the retiral benefit in the form of the contributory provident fund, leave encashment and gratuity, the said amount has not been released to him despite his retirement from service with effect from 01.02.2000. It has further been submitted that the amount of Rs.3,59,800/-, which has been withheld from the payment to the petitioner by order dated 01.11.1995 cannot be allowed to continue as more than twelve years have lapsed from passing of the said order and the Civil Suit initiated by the parties in respect of the said amount have not been disposed of till date. Mr. Das has further contended that in any case, he cannot be made liable for the jaggary delivered to the parties concerned as the same was done pursuant to the order of temporary injunction dated 07.10.1988.

4. Mr. Sarma, the learned counsel appearing on behalf of the respondent Nos. 2 and 3, on the other hand, has submitted that the order dated 01.11.1995 passed by the Managing Director of the Corporation has never been challenged by the petitioner while he was in service, i.e. at any time before his retirement, and only in the year 2004, according to the petitioner, he filed a representation before the Managing Director for review of such order. According to Mr. Sarma, the petitioner, therefore, has accepted such order dated 01.11.1995 and, therefore, now cannot say that an amount of RS. 3,59,800/- recoverable from him, cannot be withheld till the civil proceedings pending before the Court are decided. Mr. Sarma has further submitted that the petitioner is entitled to a sum of Rs.93,637/- towards the contributory provident fund apart from a sum of Rs.2,50,000/- towards gratuity and a further sum of Rs.1,40,137/- towards the leave encashment benefit totaling Rs.4,47,774/- and the payment of the said amount is withheld because of the order dated 01.11.1995 and the amount would definitely released to the petitioner in the event the civil proceedings initiated by different parties relating to the delivery of the jaggery are decided against the plaintiff in Money Suit Nos.7/1991 renumbered as Money Suit No.6/2001 and Money Suit No.25/991 renumbered as Money Suit No.1/2002 presently pending in the Court of the learned Additional District Judge, Dibrugarh.

5. The petitioner, never at any point of time, prior to his retirement from service has challenged the order dated 01.11.1995, by which the Managing Director has imposed the penalty, as noticed above, on the basis of the disciplinary proceeding initiated against him. By the said order an amount of Rs.3,59,800/- was directed to be recovered subject to the decision of the Civil Court in the cases as aforesaid. The petitioner, in the meanwhile, has retired from service. The petitioner has not challenged the said order dated 01.11.1995 before any Court of law and hence the said order attains its finality as the petitioner has already retired from service. Therefore, there is no question of directing the respondents to release the said amount of Rs.3,59,800/- to the petitioner as he has already retired from service, otherwise, in the event the said Civil Proceedings are decided against the Corporation, it would be difficult to realize such amount from the petitioner unless the said amount is kept withheld from the payment to the petitioner from out of the retiral benefits payable to him. However, with the condition that in case the aforesaid Civil Suits are decided in favour of the Corporation, the said amount has to be paid to the petitioner, in terms of the order dated 01.11.1995, which order has not been challenged in the present proceeding also.

6. Admittedly the total amount due and payable to the petitioner as on date of retirement is Rs.4,47,774/- out of which by deducting amount of Rs. 3,59,800/-, the amount payable by the Corporation to the petitioner was Rs.87,974/-, which amount has not been paid by the Corporation, though the disciplinary authority vide order dated 01.11.1995 ordered for conditional recovery of Rs.3,59,800/- only. In view of the aforesaid position, the respondents, more particularly, the respondent Nos.2 and 3 are directed to release the amount of Rs.87,974/- with interest at the rate of 12% per anumn from the date of the petitioner’s retirement from service, i.e. 01.02.2000 till the payment is made, as such amount was admittedly due and payable to the petitioner, which has been withheld from him thereby putting a retired person in difficulty and depriving him from enjoyment of such amount. The respondent Nos.2 and 3 are directed to pay the aforesaid amount alongwith the interest calculated thereon, within four weeks from today.

7. The writ petition is accordingly disposed of with the aforesaid directions. No cost.